

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Revision of the Commission's Rules To)	
Ensure Compatibility with Enhanced 911)	CC Docket No. 94-102
Emergency Calling Systems)	
)	
Request for Waiver of Handset Penetration)	WT Docket No. 05-____
Rule by GTE Pacifica, Inc. d/b/a)	
Verizon Pacifica)	

**GTE PACIFICA, INC. D/B/A VERIZON PACIFICA
REQUEST FOR WAIVER**

Pursuant to Sections 1.3 and 1.925 of the Commission's rules, GTE Pacifica, Inc. d/b/a Verizon Pacifica ("Pacifica"), the wireline-side cellular licensee for the Commonwealth of the Northern Mariana Islands ("CNMI"), hereby requests a waiver of Section 20.18(g)(1)(v) of the Commission's rules. This rule requires that carriers employing a handset-based Enhanced 911 ("E911") Phase II technology convert 95 percent of their subscriber base to GPS-capable handsets by December 31, 2005 (the "Handset Penetration Rule"). Based on the unique circumstances described below concerning Pacifica's operations in the CNMI, an 18-month extension of the deadline *through June 30, 2007*, would be consistent with the public interest and Congress's intent in the ENHANCE 911 Act that Tier III providers be provided relief in circumstances applicable to Pacifica.

BACKGROUND

I. Pacifica's Network and E911 Phase II Plans

Pacifica is a "Tier III" CMRS provider offering service on the CNMI islands of Saipan, Tinian and Rota. The CNMI, a self-governing commonwealth in political union with and under the sovereignty of the United States of America, is located in the Micronesia area of the eastern Pacific Ocean, over 5,000 miles from the mainland U.S. Pacifica provides cellular service. Pacifica is a wholly-owned subsidiary of the Micronesian Telecommunications Corporation ("MTC"), which only recently was acquired by Pacific Telecom, Inc. ("Pacific Telecom") from Bell Atlantic New Zealand Holdings, Inc., a subsidiary of Verizon Communications.¹

Pacifica provides wireless service principally via CDMA technology, which it has generally overlaid coextensive with the coverage of its legacy TDMA and analog platforms. Pacifica intends to employ a handset-based solution for its CDMA network.² A handset-based solution, Pacifica believes, is most complementary of Pacifica's CDMA network and will best serve the public safety needs of its subscribers once the local government Public Safety Answering Point ("PSAP") is Phase II-capable, which is estimated to occur no earlier than mid-to-late 2007. Pacifica launched its CDMA technology platform in 2004 on the island of Saipan (where 90 percent of CNMI's population resides) and in the fall of 2005 on the islands of Rota and Tinian. Consistent

¹ The Commission approved the transfer of control of MTC and Pacifica in 2003. *See Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, 18 FCC Rcd 23140 (2003). The parties consummated the transaction September 20, 2005, following approval by the local CNMI regulator.

² As the Commission is aware, handset-based solutions are not available for TDMA technology. Pacifica notes that its competitors in the CNMI have all either opted for a network-based solution or utilize the GSM air interface protocol for which handset-based solutions are not presently available in the U.S. *See* Guam Cellular and Paging, Inc. E911 Interim Report, CC Docket No. 94-102, filed Aug. 1, 2003, at 1 (CDMA-based carrier opting for network-based solution); www.icconnectguam.com (Wave Runner CNMI Inc. operations using GSM technology, as well as iDEN); www.hafatel.com (Guam Wireless Telephone Company LLC/ Hafatel operations using GSM technology).

with the objective of Section 20.18(g)(1)(iv) of the Commission's rules, no non-ALI capable handsets have been activated in the CNMI since late 2004.³ Approximately 53 percent of Pacifica's subscribers (all CDMA) have ALI-capable handsets. The vast majority of the remaining customers have legacy TDMA handsets, with a couple hundred subscribers owning analog handsets.

Pacifica plans to continue to actively migrate customers to its CDMA platform during 2006 and through mid-2007, after which time it intends to retire the TDMA network entirely. This timeframe roughly coincides with the earliest date by which it is anticipated that Pacifica might need to initiate E911 Phase II service upon request of a PSAP. After the phase-out of the legacy TDMA network, all Pacifica subscribers will, with the possible exception of a few remaining analog subscribers, require CDMA handsets (all of which will have ALI capability) in order to use Pacifica's network.

Pacifica has substantial incentive to migrate customers to the CDMA network expeditiously. Not only does Pacifica prefer to avoid the costs of operating multiple technology platforms, but the advanced features and innovative rate plans that enable Pacifica to more effectively compete in the marketplace are available only through CDMA service and handsets.⁴ In addition, having all customers on a common CDMA network simplifies and makes marketing efforts more effective⁵ and will enable Pacifica to use its network more efficiently. While Pacifica's ability to discount handset prices is necessarily restricted due to the limited availability of wholesale discounts to Tier III carriers generally (Pacifica, like other Tier III carriers, does not have the same purchasing power as larger Tier I and Tier II carriers), the company already offers (and will continue to offer)

³ See 47 C.F.R. §§ 20.18(g)(1)(iv).

⁴ See *supra* note 3.

⁵ For example, sending targeted advertising messages to CDMA customers for feature enhancements is a wasted effort with respect to TDMA customers until they upgrade handsets.

discounts for CDMA handsets to encourage subscribers to upgrade their service and handsets.

II. PSAP Capabilities in the CNMI

To date, Pacifica has not received a request for either Phase I or Phase II E911 service from the CNMI's PSAP.⁶ Although the CNMI has implemented an emergency calling system employing basic 911 dialing, local government authorities have indicated to Pacifica that a number of higher priorities and threshold issues for deploying E911 remain to be addressed, including securing funding and taking care of basic safety-related infrastructure considerations such as the designation of street numbers and installation of street signs on the islands. As the PSAP approaches Phase II-readiness in its own right, Pacifica will coordinate its Phase II efforts with the PSAP to ensure that customers are apprised of the public safety benefits of ALI-capable handsets.

Based on discussions with local government authorities, the PSAP's initial request for E911 is anticipated no sooner than approximately 18 months. At the earliest, Pacifica would be required to initiate Phase II service 6 months thereafter – *i.e.*, sometime in late 2007 – roughly coinciding with Pacifica's planned phase-out of TDMA technology and non-ALI-capable handsets in mid-2007.⁷

III. Unique Demographic Factors Hinder Pacifica's Migration of Customers from TDMA to CDMA

CNMI is a three hundred-mile archipelago consisting of fourteen islands stretching north of Guam, the largest inhabited islands of which are Saipan, Rota and Tinian. Saipan is the population, economic and government center of the island, with over 60,000 people

⁶ Notwithstanding the absence of a Phase I request, Pacifica already has this capability built into its CDMA network.

⁷ See 47 C.F.R. § 20.18(g)(2).

(based on 2000 Census Bureau statistics). More than half of the population consists of non-U.S. citizens who, in turn, constitute over 77 percent of the labor force on Saipan and work predominantly in low-wage occupations.⁸ In 1999, the median per capita income in CNMI was 42.4 percent of the U.S. average.⁹

These demographic factors have significant implications for Pacifica's ability to migrate existing subscribers to CDMA handsets. The advanced features in Pacifica's CDMA handsets that have encouraged handset upgrades elsewhere in the United States simply cannot override the economic realities facing CNMI's low-wage population. Indeed, nearly one-half of Pacifica's customers subscribe to the company's prepaid offerings. Many of these subscribers replenish their accounts only periodically, sometimes allowing their accounts to lie dormant for weeks at a time. Even a significant number of subscribers on post-paid accounts rely on a relative or employer to be financially responsible for all recurring charges and may not independently have the financial means or incentive to upgrade their handsets.

DISCUSSION/REQUEST FOR RELIEF

I. Limited Waiver Would Be Consistent with the Public Interest

The Commission's E911 rules may be waived for good cause shown; as the Commission has explained, waiver is appropriate where special circumstances warrant a deviation from the general rule, and such deviation serves the public interest.¹⁰ The

⁸ The federal minimum wage laws do not apply in the CNMI; the minimum wage set by local CNMI law is \$3.05 per hour.

⁹ See U.S. Census Bureau, 2000 Census, American Finder, available at <www.census.gov>.

¹⁰ 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Section 1.925(b)(3) provides that for wireless licensees, waiver may be warranted if "(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." 47 C.F.R. § 1.925(b)(3).

Commission recognizes that waivers may be appropriate for E911 Phase II handset deployment benchmarks, and has explained how this standard would be applied in the E911 context. Requests for waiver of Phase II requirements should be “specific, focused and limited in scope, and with a clear path to full compliance”¹¹ and “carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver requests.”¹²

The Commission has provided relief from the Phase II handset deployment deadlines for a number of Tier III carriers seeking limited relief from handset compliance benchmarks,¹³ and grant of the requested relief would be consistent with the waiver standard and the E911 Phase II policy objectives underlying those decisions. Pacifica has already undertaken “concrete steps” toward compliance. As discussed above, Pacifica has completed its CDMA overlay. The company has offered CDMA service for just over a year, yet has migrated and activated new customers such that, today, approximately 53 percent of its subscribers have CDMA handsets. The effectiveness of the company’s efforts to date is particularly noteworthy given the company’s small and limited market. Pacifica offers feature-rich services and innovative rate plans that are available only

¹¹ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442, ¶ 44 (2000) (“*E911 Fourth MO&O*”). The standard announced in the *E911 Fourth MO&O* has been applied to Tier III carriers.

¹² *E911 Fourth MO&O*, ¶ 44.

¹³ See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, Order to Stay, CC Docket No. 94-102, 17 FCC Rcd. 14841, 14852-53, ¶¶ 32-33 (2002) (“*Non-Nationwide Carriers Order*”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order to Stay, 18 FCC Rcd. 20987 (2003) (“*Tier III Stay Order*”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, 20 FCC Rcd. 7709, ¶¶ 13-91 (2005) (“*Tier III Relief Order*”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Enhanced 911 Phase II Requirements*, Order, CC Docket No. 94-102, FCC 05-182 (rel. Oct. 28, 2005) (“*Mid-Missouri et al. Order*”).

through CDMA service and handsets. Moreover, no non-ALI capable handsets have been activated in the CNMI since late 2004.¹⁴

Pacifica's efforts will continue through handset discounts and the company's planned migration effort, which will include marketing activities already under way such as bill inserts with new handset offers, website announcements, telemarketing and direct mail. As the PSAP eventually approaches Phase II-readiness, Pacifica will initiate efforts to inform customers of the E911 benefits of handset upgrades.¹⁵ Pacifica has deployed an innovative direct sales channel in the form of a mobile facility – the “PTI Star Cruizer” – that drives around the island both visiting planned events and creating events for sales opportunities.

It is important to note, however, that a number of carriers have documented that many customers will be resistant to handset upgrades, and Pacifica's subscribers, many of which are low-income, are no exception.¹⁶ As noted above, the CNMI's economy is low-wage with private sector employment dominated by foreign guest workers; once these consumers have a handset, they are reluctant to migrate due to the expense of a new handset in a transient work economy. Further, a significant number of Pacifica's

¹⁴ See *Mid-Missouri et al. Order* at ¶ 18 (“timely meeting applicable sale and activation deadlines” and “[i]n particular, ensuring that 100 percent of all new digital handsets activated are location-capable is an important step that should eventually lead ninety-five percent penetration of location-capable handsets.”). While the CDMA upgrade for the more sparsely populated islands of Tinian and Rota was completed in the fall of 2005, there have been no TDMA handset activations on those islands in the past year. Pacifica also notes that it is the only wireless carrier with facilities on either Tinian or Rota at present.

¹⁵ Given the PSAP's expectation that it will not be Phase II-capable for at least another 18 months, the public interest benefits of Pacifica “actively inform[ing] and educat[ing] its customers concerning the advantages of having location-capable handsets” are less acute at this time. See *Mid-Missouri et al. Order* at ¶ 24. In this regard, in considering Sprint's circumstances the Commission noted, not disapprovingly, that while “Sprint ... is currently not advertising the GPS-capabilities of these handsets because it is concerned that such advertising might lead to inaccurate customer expectations about location-capability” See *Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Request for a Limited and Temporary Rule Waiver by Sprint Corporation*, Order, 18 FCC Rcd 12543, ¶ 13 n.52 (2003).

¹⁶ See, e.g., Verizon Wireless Request for Limited Waiver, WT Docket No. 05-301, filed Oct. 17, 2005, at 15-23; Alltel Corporation Petition for Limited Waiver, WT Docket No. 05-287, filed Sept. 30, 2005, at 7-9.

customers subscribe to prepaid service, and many of these customers replenish their accounts only periodically. Nonetheless, as Pacifica has established a clear “cut-off” date to migrate customers to CDMA and to shut down its TDMA network in a timeframe that coincides roughly with the PSAP’s projected Phase II readiness, the company has “establish[ed] a clear path to full compliance.”¹⁷

In addition, strict enforcement of the December 31, 2005 deadline is not in the public interest where, as here, the PSAP will not be able to receive and utilize the ALI data provided by ALI-capable handsets until well into the future.¹⁸ Officials of the CNMI’s Public Safety department have indicated to Pacifica that they are not yet prepared or trained to deploy the services of a full E911 system but anticipate completing the training and the capability within approximately an 18 month timeframe. As the Commission has acknowledged, the public safety implications of not meeting the established handset benchmarks are mitigated where PSAPs have not yet deployed Phase II service.¹⁹ Many of Pacifica’s subscribers are low-income; and compelling them to upgrade their handsets for Phase II purposes at this point in time – when the PSAP will not be Phase II-capable until *mid-2007* – does not in any way promote the Commission’s statutory public safety mandate.²⁰ Indeed such measures would only serve to frustrate Pacifica’s subscribers and unnecessarily harm Pacifica in the competitive marketplace.²¹ In all events, Pacifica will continue to coordinate its efforts with the PSAP in its CNMI service area, and its migration

¹⁷ Pacifica’s compliance plan is thus markedly different than those of other Tier III carriers which the Commission has determined did not provide a clear path to full compliance. *See, e.g., Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Enhanced 911 Phase II Waiver by Northeast Communications of Wisconsin, Inc. dba Cellcom*, Order, CC Docket No. 94-102, FCC 05-200, ¶¶ 18-19 (rel. Dec. 8, 2005).

¹⁸ Pacifica notes that, over two years ago, Pacifica participated in a competitive bid to assist the local government in establishing E911 services, but no award was given due to a lack of funding.

¹⁹ *See Tier III Relief Order* ¶¶ 20.

²⁰ *See* 47 U.S.C. § 151.

²¹ *See supra* note 3.

plan is such “that community expectations are consistent with [Pacifica’s] projected compliance deadlines.”²²

The Commission has previously waived its Phase II requirements, including the December 31, 2005 deadline, to facilitate TDMA-based carriers’ CDMA upgrades.²³ Notably, the Commission granted ACS Wireless, Inc. (“ACSW”) a six-month extension in markets where PSAPs were already capable of service, and a *thirteen-month* extension through January 31, 2007 for areas where PSAPs did not have Phase II capability at the time. Here, Pacifica has affirmatively confirmed with the PSAP the timing of its Phase II readiness and established a compliance plan consistent with the PSAP’s expectation of Phase II-readiness no earlier than mid- 2007. Thus, additional time through June 30, 2007 would be consistent with the public interest.

Pacifica acknowledges the Commission’s statement that “[l]ocation-capable handsets benefit public safety even if the customer’s local PSAP is not ready for Phase II, due to the mobile nature of wireless phones.” The FCC’s statement was based on the supposition that “[w]hen customers travel, a location-capable phone provides them with Phase II service in the many communities where PSAPs are in fact Phase II ready.”²⁴ In the case of Pacifica and its remote insular service area, however, less than one percent of its subscribers roam; and currently all these are limited to roaming to Guam, whose PSAP we understand also does not yet have E911 Phase II capability. Historically, Pacifica has had no roaming traffic to the continental U.S. or Hawaii. Although Pacifica recently concluded a system upgrade with Syniverse that will facilitate additional roaming traffic to

²² See *Tier III Relief Order* ¶ 10 (citing *Non-Nationwide Carriers Order* at ¶ 28).

²³ See *Tier III Relief Order* at ¶¶ 13-91.

²⁴ See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition for Enhanced 911 Phase II Waiver by Leaco Rural Telephone Cooperative, Inc.*, Order, FCC 05-210, ¶ 21 n.60 (rel. Dec. 12, 2005).

the U.S. in the future, the number of roamers likely will be low because of the low-wage economy and the fact that the CNMI's foreign guest workers typically do not have visas to enter the U.S. In any event, the Commission's concern with roamers is significant only with respect to non-ALI-capable CDMA handsets. Pacifica's limited number of TDMA and analog subscribers roaming off the islands will be able to avail themselves of the benefits of Phase II service where the home carrier has deployed a network-based solution. Pacifica's CDMA subscribers, all of whom have ALI-capable handsets, also will be able to take advantage of the home carrier's E911 Phase II capabilities.²⁵ For this reason as well, grant of the waiver would be consistent with the public interest.

II. Relief Is Warranted Under the ENHANCE 911 Act

As discussed in the previous section, grant of Pacifica's waiver request would be consistent with the Commission's general waiver standard. The ENHANCE 911 Act provides a further basis for grant of Pacifica's requested relief.²⁶ The ENHANCE 911 Act directs the Commission to grant qualified Tier III carriers' requests for relief from the Handset Penetration Rule if "strict enforcement of the requirements of that [rule] would result in consumers having decreased access to emergency services."²⁷

²⁵ Indeed, for E911 purposes, Pacifica's subscribers will be no worse off than those of its competitors, all of which have opted for (or are technologically compelled to deploy) a network-based solution. *See supra* note 2.

²⁶ The Commission has found that relief may be warranted under the ENHANCE 911 Act irrespective of whether relief is warranted under the Commission's own standard. *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Southern Communications Services, inc. d/b/a SouthernLINC Wireless*, Order, FCC 05-188, par. 19 n.58 (rel. Nov. 3, 2005) (relief granted "solely on the directive of the ENHANCE 911 Act"). Moreover, in granting ACSW relief the Commission expressly did "not preclude [the carrier] from seeking *additional* relief ... under the standard articulated in the ENHANCE 911 Act" – thus confirming that the ENHANCE 911 Act may also warrant relief beyond that afforded under the general waiver standard. *See Tier III Relief Order* at ¶ 21 n.65 (emphasis added).

²⁷ National Telecommunications and Information Administration Organization Act – Amendment, Pub.L.No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) ("ENHANCE 911 Act").

Pacifica's request for an 18-month extension would be consistent with the ENHANCE 911 Act and also meets the underlying public safety objectives of the E911 rules. Pacifica provides basic 911 service to its subscribers. Pacifica has been selling ALI-capable handsets for just over one year, since it completed its CDMA upgrade on Saipan; and there has simply been inadequate time for Pacifica to migrate all its legacy TDMA/analog subscribers to CDMA. Thus, in order to comply with strict enforcement of the Commission's rules, Pacifica would be compelled to discontinue service to virtually all of its incumbent TDMA and analog subscribers by year-end 2005.

In that event, until these subscribers upgrade their handsets they would have decreased access to emergency services via their wireless phones – which, for many subscribers, is their only phone service given the comparatively low rate of wireline telephone penetration on the islands.²⁸ Moreover, Pacifica is the only wireless carrier to deploy facilities on the islands of Tinian and Rota. As noted above, given the CNMI's low-wage and transient work economy, once consumers have a handset, they are reluctant to migrate due to the expense of a new handset, even when discounts are available. It is unrealistic to expect these low-income consumers, many of whom replenish their prepaid minutes only sporadically, to immediately purchase a new handset even when they learn that their phones no longer work. Also, although Pacifica has worked to deploy CDMA coverage coextensively with its analog network, its analog subscribers might experience decreased access to emergency services insofar as that, even after analog subscribers upgrade to CDMA, their lower-power digital handsets may work less effectively in the more remote areas of the islands. Thus, if Pacifica is forced to discontinue services in

²⁸ In order to complete a 911 call on a TDMA handset in such circumstances, the customer would need to switch his or her handset to "analog-only" mode. The considerable inconvenience and customer confusion, resulting from such draconian action, however, would result in decreased access to emergency services.

order to comply with the December 31, 2005 deadline, “it appears likely that strict enforcement ... would impair the ability of certain 911 callers to reach emergency assistance” thereby invoking the provisions of ENHANCE 911 Act.²⁹

CONCLUSION

For the foregoing reasons, grant of Pacifica’s request for waiver of Section 20.18(g)(1)(v) of the rules through *June 30, 2007* is warranted as serving the public interest and is consistent with the ENHANCE 911 Act.

Respectfully submitted,

GTE PACIFICA, INC. D/B/A VERIZON PACIFICA

/s/

Anthony S. Mosley
Chief Operating Officer

Dated: December 19, 2005

²⁹ See *Mid-Missouri et al. Order* at ¶ 20.